COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

{CHAPTER VIII, RULE 32(2) (B)}
Description of Case

Criminal Appeal No. 601 of 2001
(Old No. 1175 of 1989)

Gyan Chand

.....Appellant

Vs.

The State

.....Respondent

Counsel for appellants: - Sri Rajendra Kotiyal
Counsel for respondent:- Sri Amit Bhatt, Addl. G.A. for the State

~~Approved for Reporting.~~
Not approved for reporting.

Date: May 03, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO. 601 OF 2001
(Old No. 1175 of 1989)

Gyan Chand, S/o Gurmukh,
Resident of Gurdwara Road,
P.S. Tehri, District Tehri Garhwal

..... Appellant

Versus

State ...Opposite Party

Dated: May 03, 2007

Sri Rajendra Kotiyal, learned counsel for the appellant
Sri Amit Bhatt, learned Addl. GA for the State.

HON. DHARAM VEER, J.

This appeal has been preferred under Section 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*) against the judgment and order dated 03.05.1989 passed by Special Judge (District Judge) Tehri Garhwal, in Special Trial No. 03 of 1988, under Section 3/7 of Essential Commodities Act 1955, whereby the learned Special Judge (District Judge) has convicted the appellant under Section 3/7 Essential Commodities Act 1955, and awarded sentence for one year rigorous imprisonment.

2. The prosecution story, in brief, is that accused Gyan Chand runs a shop under the name and style of firm Gurmal Das Gyan Chand at Tehri and sells oil seed products, edible oil seeds and edible oils. On 15.10.87 at about 12 noon, Chandra Shekhar Ojha PW1, who had been delegated power by District Magistrate, Tehri Garhwal, on 5.3.85 made a search and inspected the said shop. Surendra Singh Negi and Kishan Singh Panwar, Supply Inspectors were with him. This search was taken in the presence of

Rajendra Prasad PW2 and Indra Datt PW3. On search of the shop, 43 tins of the edible oils weighing 6 quintals and 45 Kgs. were found for which accused Gyan Chand had no licence. 20 tins of mustard oil weighing 3 quintals, 10 tins of refined oil weighing 1 and ½ half quintals, 10 tins of vegetable oil weighing 1 & ½ quintals and 3 tins of Soyabean oil weighing 45 kgs. were found. Memo Ex.Ka-1 was prepared for this recovery. Accused Gyan Chand gave cash memos Exts. 1 to 4. Samples Exts. 9 to 12 of the said oils were taken and a memo was prepared for the same. Then the recovered articles were given in the supurdagi of Rajendra Prasad PW2. Chandra Shekhar Ojha PW1 lodged report Ext. Ka-3 of this occurrence at police station, Tehri at 7 p.m. on 15.10.87. Head constable Brij Raj Singh PW4 prepared the Chik Report Ext.Ka-7 on the basis of the said report which is Ext.Ka-3 and made necessary entry Ext.Ka-8 in the general diary. Sub Inspector, S.P. Singh PW5 started investigation of this case from 15.10.87. He recorded statement of the witness PW1 Chandra Shekhar Ojha who produced the Photostat copy of cash memo Exts. 5 to 8 at Police Station, Tehri for which memo Ext.Ka-4 was prepared. He handed over the 5 samples of the edible oils Exts. 9 to 12 to the Investigation Officer on 20.10.87 as per memo Ext.Ka-5. On 25.10.87, Sub Inspector, S.P. Singh inspected the spot and prepared site plan Ext.Ka.-9. He obtained sanction Ext.Ka.-10 to prosecute the accused Gyan Chand from Sri Rajiv Gupta, District Magistrate, Tehri Garhwal and submitted the charge sheet Ext. Ka-11 on 25.2.88.

3. The charge was framed against the accused/ appellant under Section 3/7 for Essential

Commodities Act, 1955 on 16.8.1988. The accused pleaded not guilty and stated that he was falsely implicated. He has stated that only 33 tins of edible oils were recovered from his shop. This edible oil weighed less than 5 quintals and no licencse was needed for this limit. He did not commit any offence. He also admits that some cash memos were also recovered from his shop. He did not lead any evidence in defence. The prosecution examined the above said 5 witnesses and filed the documents referred above to prove its case. After examining the evidence on record, the learned Special Judge (District Judge) vide his order dated 3.5.1989 has convicted the appellant under Section 3/7 of the Essential Commodities Act 1955 and sentenced him to one year rigorous imprisonment. Against the said order dated 3.5.1989, the appellant has filed the present appeal.

4. I have heard Mr. Rajendra Kotiya., learned counsel for the appellant and Mr. Amit Bhatt, learned Additional Government Advocate, for the State and perused the entire records.

5. PW1 Chadra Shekhar Ojha is Area Rationing Officer. His evidence is that on 15.10.87 at 12 noon, he inspected the shop of accused Gyan Chand along with Surendra Singh Negi and Kishan Singh Pawar, Supply Inspectors. He found 43 tins of edible oil weighing 6 quintals and 45 Kgs. in his shop without any licence. He has also stated in examination-in-chief that 20 tins of mustard oil weighing 3 quintals, 10 tins of refined oil Himshikhar Brand weighing one and half quintals, 10 tins of vegetable oil weighing one and half quintals and 3 tins

of Soyabean oil weighing 45 kg. were recovered from the shop of the accused. He dictated the recovery memo Ex.Ka.-1 to Kishan Singh Pawar, Supply Inspector for this recovery. He put his signature on this recovery memo. He obtained cash memo Exts.1 to 4. He took samples of the oils Exts. 9 to 12 for which a memo was prepared. Then, the tins of oil recovered were given in the supurdagi of Rajendra Prasad PW2 on 15.10.87 as per supurdaginama Ext.Ka-2 and the signature of accused Gyan Chand was obtained on the said memo. He has stated that he has handed over samples Exts. 9 to 12 of the edible oil to the Investigating Officer on 20.10.87 as per memo Ex.Ka-5. He has also lodged the F.I.R. Ex.Ka-3 and he has taken the sanction to prosecute the accused from Sri Rajeev Gupta, the then District Magistrate and that sanction is Ex.Ka-10. In the cross-examination, he has stated that the firm Gurmal Das Gyan Chand run by accused Gyan Chand is a retail shop. He has also stated in his cross-examination that each of the tin is weighing 16 kgs., out of which the empty tin weighs 1 kg. and the contents weighing 15 kgs. He has added that 2 to 4 tins were weighed. Each tin was sealed and there was no leakage therein. He has stated in his cross-examination that he took 4 cash memos into his possession but only 3 cash memos were mentioned in memo Ext.Ka-1. He inadvertently missed the entry of the fourth cash memo. It is admitted to him that cash memo ex.1 is dated 28.9.87 regarding 20 tins mustard oil but it has been described as dated 29.8.87 for 10 tins. It is also admitted to him that cash memo Ext.2 is dated 16.9.87 but the same is written dated 4.9.87 in memo Ext.Ka-1. He has categorically stated that the said difference has occurred on account of his

misreading. No date of cash memo Ex.4 has been mentioned in the memo Ext.Ka-1. Accused Gyan Chand has admitted recovery of cash memos in his statement recorded u/s 313 Cr.P.C. There is categorical statement of the Chandra Shekhar Ojha that all the four cash memos Exts.1 to 4 were recovered from the shop of accused Gyan Chand. The discrepancies in their dates in the recovery memo Ext.Ka-1, as pointed out above, all immaterial.

6. Rajendra Prasad PW2 is also another witness of the recovery proceeding. His evidence is that on 15.10.87 at 12 noon, the shop of the accused Gyan Chand was searched in his presence. 20 tins of mustard oil weighing 3 quintals, 10 tins of Him Shikhar brand refined oil weighing one and a half quintal, 10 tins of vegetable oil weighing one and a half quintals and 3 tins of Soyabean oil weighing 45 Kgs. were recovered. The cash memo Exts. 1 to 4 of these oils was also taken from the accused. The samples of the oil Exts. 9 to 12 were also taken and a label was affixed to these bottles on which he also signed, thereafter, the tines were given in his supurdagi vide memo Ext.Ka-2. This oil has been auctioned as per orders of the Court. He has further stated that 43 tins of edible oil were recovered from the shop of accused Gyan Chand. The 43 tins of edible oil recovered from the shop of accused Gyan Chand were given in his supurdagi as per supurdaginama Ext.Ka-2.

7. P.W.3 Indra Datt has stated that Area Rationing Officer examined the shop of accused Gyan Chand in the presence of accused Gyan Chand and Rajendra Prasad and 43 tins of oil, which were sealed,

were recovered. He could not state the contents of the tins. He has stated that the samples of the oil were taken. But he could not give the details of these tins. He was declared hostile by the prosecution. He has stated in his cross examination made by the prosecution that 43 tins were recovered from the shop of accused Gyan Chand for which recovery memo Ext. Ka-1 was prepared by Area Rationing Officer and he has also put his signatures on the same. He has stated in cross-examination made by the appellant/accused that 43 tins of oil were given in the supurdagi of Rajendra Prasad. He has categorically stated that 43 tins were given to Rajendra in his presence. From his evidence, it is crystal clear that 43 tins of oil were recovered from the shop for the accused Gyan chand and not 33 as alleged by the defence.

8. The prosecution examined P.W. 4 Head Constable Brajpal Singh. He is the formal witness. He has stated that on 15.10.1987, he was posted as Head Moharrir in Police station Tehri. On that day, P.W. 1 Chandra Shekhar Ojha came in the police station and lodged the F.I.R. Ex.Ka-3. On the basis of the said FIR Ex.Ka-3, he has prepared a Chik Report Ex.Ka-7 and on the basis of the Chik Report, the entry was made in the G.D. on the same day in Report No. 46 at 19:00 hours on 15.10.1987, a copy of which has been filed and is on record Ex.Ka-8.

9. P.W.5 is Sub-Inspector S.P. Singh who is the Investigating Officer of the case. He has stated in his statement that on 15.10.1987, he was posted as S.S.I. in Police Station, Tehri. On that day, Chandra Shekhar Ojha, Area Rationing Officer came to the

police station to lodge the F.I.R. against the accused firm “Gurmukh Das Gyan Chand” u/s 3/7 of E.C. Act. The investigation of the case was entrusted to him. During the investigation, he has recorded the statement of the witnesses and he has also inspected the spot and prepared the site plan i.e. Ex.Ka-9. He has also taken the sanction from Sri Rajeev Gupta, the then District Magistrate on 25.2.1988 for filing the prosecution against the accused i.e. Ex.Ka-10. He has also stated that Sri Rajeev Gupta, the then District magistrate has given his sanction after examination of the C.D. and other documents and after applying his mind. After completing the investigation, he has filed the charge sheet i.e. Ex.Ka-11. He was also cross-examined by the defence counsel, but nothing has come out which may create a doubt in his statement.

10. It was stated by the accused Gyan Chand in his statement recorded under section 313 Cr.P.C. that Chandra Shekhar Ojha raided his shop on 15.10.87 at 12 noon. He has also stated that 33 tins of oil were recovered from his shop and he has also admitted that some cash memos were also recovered from there. He has denied the rest of the allegations made against him.

11. Sri Vishambhar Dayal Gupta, the then District Magistrate, Tehri Garhwal vide his order dated 5.3.1985 has delegated his powers to District Supply Officers, Sub-Divisional Magistrate, Additional Sub-Divisional Magistrate, Tehsildar, Assistant Tehsildars, Area Rationing Officer, Supply Inspectors and Assistant Supply Inspectors. In this way, Sri Chandra Prakash Ojha P.W. 1 being the Area Rationing Officer

was authorized to search the shop of the appellant on that day as per this letter which is Ex.Ka-6.

12. Sri Rajiv Gupta, the then District Magistrate, Tehri Garhwal on 25.2.1988 granted prosecution sanction Ext.Ka-10 against the accused. A perusal of this order shows that the District Magistrate has granted the sanction after applying his mind and there is no illegality in this sanction.

13. From the above said evidence of the PW1 Chandra Shekhar Ojha, Area Rationing Officer and Rajendra Prasad PW2 and placing implicit reliance upon them, it is established beyond all reasonable doubt that on the said date, time and place, 43 tins of edible oils containing 6.45 quitals edible oils were found in the shop of accused Gyan Chand for storage and sale on 15.10.87 at 12 noon at Tehri.

14. Learned counsel for the appellant has confines his argument only on the point that on 15.10.87, the appellant was entitled to have 10 quintals of the oil including hydrogenated vegetable oils as per the rules and control orders. He has filed a copy of the Uttar Pradesh Oil seeds and Oil Drugs Control (16th Amendment) order 1987. This control order came into the force w.e.f. 02.09.1987. The said control order dated 02.09.1987 reads as under:-

No.3888/XXIX-Anu-9-93 Tel-1986
Dated Lucknow September 2, 1987

Whereas, the state Government is of the opinion that it is necessary and expedient so to do for maintaining the supplies of Oilseeds and oils and for securing its equitable distribution and availability at fair prices;
Now, therefore, in exercise of the powers under section 3 of the Essential Commodities Act, 1955 (Act no. 10 of 1955) read with the Government of India, Ministry of Agriculture

and Irrigation (Department of Food) notification No. GSR-800, dated June 9, 1978 and with the prior concurrence of the Central Government, the Governor is pleased to make the following order:

THE UTTAR PRADESH OILSEEDS AND OILSEED PRODUCTS CONTROL (SIXTEENTH AMMENDMENT) ORDER,) 1987

1. (1) This order may be called the Uttar Pradesh Oilseeds and Oil-seed Products Control (sixteenth Amendment) Order, 1987.

2. It extends to the whole of Uttar Pradesh.

3. It shall come into force at once.

2. In clause 2 of the Uttar Pradesh Oilseeds and Oilseed Products Control Order, 1986 hereinafter referred to as the said order, for the existing sub-clauses (bb) and (c) the following sub-clauses shall be substituted, namely-

"(bb) "Oil" means any oil used for cooking for human consumption and includes hydrogenated vegetable oils;

(c) "Oilseeds" means the seeds from which oil is produced;

(cc) Category "A" "B" and "C" cities means the categories of cities as defined in the Pulses, Edible Oilseeds and Edible Oils (Storage Control) order, 1977".

3. In the said order, after the existing clause 12 of the following new clause shall be inserted, namely -

"13. Restriction on possession of oilseeds and oils]. No dealer shall after a period of fifteen days from the commencement of this clause, either by himself or by any person on his behalf, store or have in his possession at any time, any oilseeds or oils in excess of the quantities specified below:-

Commodity	*Category of cities*	*Stock limits in quintals in case of -*		*Remarks*
		Wholesaler	*Retailer*	
(1) Oilseeds including groundnut in shell	*Category – A* *Category – B* *Category – C*	*1000* *750* *300*	*100* *75* *50*	*1. All oilseeds taken together* *2. For groundnut kernel or seeds 75% of the limits specified shall apply.*
(2) oils including hydrogenated vegetable oils	*Category – A* *Category – B* *Category - C*	*600* *400* *250*	*25* *15* *10*	*All oils including hydrogenated vegetable oils*

4. In the said order schedule I shall be omitted.

15. On the basis of the above quoted control order, learned counsel for the appellant submitted that as per category 'C', a retailer can have '10' quintals of oils including hydrogenated Vegetable Oils which has been mentioned in clause 3 of sub-clause (2) of the above said order.

16. Learned counsel for the appellant also submitted that in the Pulses Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 "Other areas" have been defined in sub-clause (d) of Clause 2, which provides that "Others areas" means any other place which is not a category 'A' city or category 'B' city. In the schedule provided with this order, 'Tehri' does not find place and hence he submitted that 'Tehri' comes in Other Areas. The schedule provided to the said control order reads as under:-

SCHEDULE

{See clause 2 (b) and (c)}

Category 'A' Cities (Having a population of (10,00,000 and above)		*Category 'B' Cities (Having a population of 3,00,000 and more but less than 10,00,000 and Capital Cities of states and Union Territories other than Category 'A' Cities).*	
(1)		*(2)*	
1.	*Calcutta*	*1.*	*Nagpur*
2.	*Greater Bombay*	*2.*	*Coimbatore*
3.	*Delhi*	*3.*	*Madurai*
4.	*Hyderabad*	*4.*	*Agra*
5.	*Madras*	*5.*	*Varanasi*
6.	*Bangalore*	*6.*	*Indore*
7.	*Ahmedabad*	*7.*	*Jabalpur*
8.	*Kanpur*	*8.*	*Allahabad*
9.	*Poona*	*9.*	*Surat*
		10.	*Vadodara*
		11.	*Tiruchirappalli*
		12.	*Amritsar*
		13.	*Jamshedpur*
		14.	*Cochin*
		15.	*Dhanbad*
		16.	*Salem*
		17.	*Gwalior*
		18.	*Ludhiana*
		19.	*Sholapur*
		20.	*Ulhasnagar*
		21.	*Hubli Dharwar*
		22.	*Meerut*
		23.	*Viskhapatnam*
		24.	*Mysore*
		25.	*Vijaywada*
		26.	*Calicut*
		27.	*Barreilly*
		28.	*Jodhpur*
		29.	*Rajkot*
		30.	*The capital cities of State and Union Territories other than Category 'A' cities.*

17. In the above quoted schedule, Tehri is not defined in category of A and B and hence it is clear that 'Tehri' comes in "other areas". Chandra Prakash Ojha, PW1 who has examined the spot in question as Area Rationing Officer, has stated in his cross examination in para 6 that "फर्म गुरूमुख दास ज्ञानचन्द फुटकर विक्रेता हैं।" It shows that the present firm of which the Gyan Chand applicant/ accused is the owner has a retail shop. Hence, the accused is a retailer and as per this notification which came into force on 02.09.1987, a retailer can have 10 quintals of Oil including hydrogenated Vegetable Oil and that was a permissible limit on the date of the occurrence i.e. 15.10.1987.

18. Mr. Amit Bhatt learned Addl. G.A. appeared on behalf of the State concedes the above said argument of the learned counsel for the appellant and he has stated that the said notification dated 02.09.1987 was not within the knowledge of the prosecution on 15.10.1987 as well as on 3.5.1989 i.e. at the time of the judgment passed by learned Special Judge (District Judge) Tehri Garhwal.

19. Considering the above said fact that the applicant was entitled as per the notification quoted above dated 02.09.1987 to store or sell the 10 quintals of Oil including hydrogenated Vegetable Oil, hence the appellant has not infringed the provisions of the Pulses & Edible Oilseeds and Edible Oil Storage Control Order, 1977/ U.P. Edible Oil & Oilseeds Production Control Order, 1966 and therefore, he has committed no offence under Section 3/7 of Essential Commodities Act, 1955.

20. For the above said reasons, the appeal is liable to be allowed and the judgment and order dated 03.05.1989 passed by learned Special Judge (District Judge) is liable to be quashed, as the order impugned is not in accordance with law.

21. In view of the above, the impugned judgment and order dated 03.05.1989 passed in Session Trial no.03 of 1989 passed by learned Special Judge (District Judge) is quashed and the appellant's conviction under Section 3/7 Essential Commodities Act 1955 and the sentence awarded to him for one year R.I. is hereby set aside. The appeal is allowed accordingly.

(Dharam Veer, J.)

Rajeev Dang